

Hon. Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ROBERT AND JONI FRANCIS, as Personal
Representatives of the ESTATE OF VANNA K
FRANCIS; and ROBERT AND JONI
FRANCIS, husband and wife, the marital
community therof,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA;
DEPARTMENT OF INTERIOR; BUREAU OF
INDIAN AFFAIRS,

Defendants.

No. C10-cv-5060-RBL

**STIPULATED MOTION AND
ORDER TO CONSOLIDATE**

(Please note on Motion Calendar for:
April 19, 2010)

Without waiver of any claim or defense any party may assert in this action, pursuant to Fed. R. Civ. P. 42, Plaintiffs Robert and Joni Francis, in their capacity of personal representatives to the estate of Vanna K. Francis and on behalf of their marital community (“Plaintiffs”), and Defendant, the United States of America (collectively, “the parties”), by and through their undersigned counsel, hereby move the Court for an order consolidating this action with a related case currently pending in this district also before the Honorable Ronald B. Leighton: *Marla Tolliver, Individually and as Personal Representative of the Estate of Ronald Scroggins v. The United States of America, Bureau of Indian Affairs, and the Department of Interior*; WDMA Case No. 10-CV-5056-RBL (“*Tolliver*”).¹

¹ The United States is concurrently filing a notice in *Tolliver* to record in that matter this Stipulated Motion to Consolidate.

1 Plaintiffs in *Tolliver*, Marla Tolliver and Larry Scroggins, through their undersigned
 2 attorney, concur in the present Stipulated Motion to Consolidate.

3 The parties seek to consolidate these cases because they involve common questions of
 4 law and fact and the consolidation of these cases will promote judicial efficiency and
 5 conservation of resources, without prejudicing any party.

6 I. RELEVANT FACTS

7 Plaintiffs in this matter and Plaintiffs in *Tolliver* allege that, on or about March 18, 2007,
 8 Vanna K. Francis and Ronald Scroggins respectively were passengers in a motor vehicle that
 9 went off the Lower Elwha Road and into the Elwha River resulting in their deaths.

10 Plaintiffs in this matter and Plaintiffs in *Tolliver* bring this matter against the United
 11 States under the Federal Tort Claims Act (“FTCA”), and allege that the United States, through
 12 its agencies, builds, maintains and/or services the Lower Elwha Road, its road signs and its
 13 lighting, which did not adequately or properly warn of the hazardous conditions or the presence
 14 of the Elwha River at the end of the Lower Elwha road.

15 II. STIPULATION

16 Fed. R. Civ. P. 42 allows a district court to consolidate actions that “involve a common
 17 question of law or fact.” Fed. R. Civ. P. 42(a). The purpose of consolidation is to enhance
 18 efficiency and to avoid the substantial danger of inconsistent adjudications. *See Bristol-Myers*
 19 *Squibb Co. v. Safety Nat’l Casualty Corp.*, 43 F.Supp.2d 734, 744 (E.D. Tex. 1999). The Court
 20 has “broad discretion under this rule to consolidate cases pending in the same district.” *See*
 21 *Investors Research Company v. United States District Court for the Central District of*
 22 *California*, 877 F.2d 777, 777 (9th Cir. 1989). The decision to consolidate is premised on a
 23 balancing test that weighs the saving of time and effort versus inconvenience, delay and expense.
 24 *See Bristol-Myers*, 43 F.Supp.2d at 744. However, typically, consolidation is favored. *See*
 25 *Johnson v. Celotex Corporation*, 899 F.2d 1281, 1284 (2nd Cir. 1990).

26 The threshold question when Fed. R. Civ. P. 42(a) is invoked is whether common
 27 questions of law or fact exist that warrant consolidation of the actions. *See Enterprise Bank v.*
 28 *Saettele*, 21 F.3d 233, 235 (8th Cir. 1994); *Bank of Montreal v. Eagle Associates*, 117 F.R.D.

530, 532 (S.D.N.Y. 1987).

This action involves questions of law and fact that are closely related to the issues raised in *Tolliver*. Specifically, the cases involve a common party: the United States. *See Seguro de Servicio de Salud v. McAuto Sys.*, 878 F.2d 5, 8 (1st Cir. 1989). Both actions involve common issues of fact: both arise from the same motor vehicle accident. *See Cantrell v. GAF Corp.*, 999 F.2d 1007, 1010-11 (6th Cir. 1993). Both actions involve common issues of law: both are brought against the United States under the FTCA for the same type of alleged negligence. This Court has previously recognized as much, in *Tolliver*, stating, that *Tolliver* “is directly related to C10-5060RBL *Francis v. USA*.” *See Tolliver* at Dkt. 7.

Additionally, Plaintiff Larry Scroggins in *Tolliver* is represented by the same counsel as Plaintiffs in this matter.

Finally, the parties are unaware of any prejudice that will flow to Plaintiffs here or in *Tolliver* from proceeding in a consolidated action. No party has engaged in a Fed. R. Civ. P. 26(f) conference, exchanged initial disclosures, prepared a Joint Status Report, or engaged in any type of discovery. Thus, none of the lawsuits have progressed to the point where prejudice from delay should be a concern. *See, e.g., Switzenbaum v. Orbital Sciences Corp.*, 187 F.R.D. 246, 248 (E.D. Va. 1999).

Therefore, the parties, by and through their respective undersigned counsel, hereby STIPULATE, AGREE, and JOINTLY REQUEST that the Court consolidate the two actions. Plaintiffs in *Tolliver*, Marla Tolliver and Larry Scroggins, through their undersigned attorney, concur in the present stipulation.

III. CONCLUSION

For the foregoing reasons, the parties’ respectfully ask this Court to grant their Stipulated Motion to Consolidate and order this action consolidated with *Marla Tolliver, Individually and as Personal Representative of the Estate of Ronald Scroggins, v. The United States of America, Bureau of Indian Affairs, and the Department of Interior*; WDWA Case No. 10-CV-5056-RBL, under the first-filed case number.

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1 So stipulated and respectfully submitted this 19th day of April, 2010.

2
3 DATED: April 19, 2010.

DATED: April 19, 2010.

4 MARTENS + ASSOCIATES PS

JENNY A. DURKAN
United States Attorney

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14 DATED: April 19, 2010.

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Attorneys for Plaintiff Larry Scroggins in *Tolliver*

ORDER

The parties having so stipulated, it is so ORDERED. The Clerk of this Court is hereby ORDERED to consolidate the present matter with *Marla Tolliver, Individually and as Personal Representative of the Estate of Ronald Scroggins, v. The United States of America, Bureau of Indian Affairs, and the Department of Interior*; WDWA Case No. 10-CV-5056-RBL, under the first-filed case number.

DATED this 21st day of April, 2010.


RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE